

# Contingency Contracting

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## Training



## Contracting Processes

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***Agile Contracting Support...Anytime...  
Anywhere***



# Overview

- Key Points
- Determinations & Findings / Justifications & Approvals
- Limitations & Exceptions
- Expedited Contracting
- Simplified Acquisition Procedures
- Contractual Instruments
- Delivery Tickets
- Accountability
- Field Ordering Officers and Ordering Officers
- Contract Types
- Paying Agent Duties
- Contract Type Compared to Risk Assessment
- Unauthorized Commitments, Ratifications, and Policy





# Key Points

- In any contingency operation, quality acquisition support to the commander is critical to mission accomplishment.
- The absence of direction should be interpreted as permitting innovation and the use of sound business judgment.
- A wide selection of contract types is available in order to provide needed flexibility in acquiring the supplies and services required. Most contingency purchases can be accomplished through Simplified Acquisition Procedures.
- Contingency Contracting Officers (CCO) should put more of an emphasis on price negotiations, even if you have competition, at sustained/established locations.
- The type of contract selected determines both the clauses to be included and the degree of risk accepted by the government.
- The objective is to select the contract type that places a reasonable degree of risk upon the contractor and provides the contractor with the greatest incentive to perform efficiently and economically.





# Determinations & Findings Justifications & Approvals

- Determinations & Findings (FAR 1.704)
  - The “determination” is a conclusion or decision supported by the “findings”
  - “Findings” are statement of fact or rationale essential to support the “determination” of the statue or regulation
  - Each D&F shall set forth enough facts and circumstances to clearly and convincingly justify the determination made
- Justifications & Approvals (FAR6.302-1)
  - A J&A's is needed when awarding contracts using other than full and open competition (one of seven reasons)
    - Sole Source, Urgency, Industrial Mobilization, Intl Agreement, Required by Statue, National Security, or Public Interest





# Determinations & Findings Justifications & Approvals

- Determinations and Findings (D&F): a special form of written approval by an authorized official, required by statute/regulation as a prerequisite to taking certain contract actions
- Ordinarily for an individual contract action





# Determinations & Findings

# Justifications & Approvals

- J&A for Other than Full and Open Competition
  - Requires written justification
- Procedures for Class J&As
  - Must clearly establish
    - Supplies and services that may be acquired
    - Contractor and contract type
    - Estimated contract value
    - Time period for award and contract performance





# Limitations and Exceptions

## Authorities

- Only One Responsible Source ..... (FAR 6.302-1)
- Unusual and Compelling Urgency ..... (FAR 6.302-2)
- Industrial Mobilization; Expert Services, Developmental/Research Capability ..... (FAR 6.302-3)
- International Agreement ..... (FAR 6.302-4)
- Authorized by Statute ..... (FAR 6.302-5)
- National Security ..... (FAR 6.302-6)
- Public Interest ..... (FAR 6.302-7)

***Note: In using other than full and open competition, the CO must complete a thorough written Justification and Approval explaining the reasons***





# Expedited Contracting

- Examples of existing authorities to expedite contracting actions include:
  - Using oral solicitations
  - Limiting sources in solicitations for urgent and compelling requirements where the Gov't would be seriously injured
  - Exceptions for issuing synopses of proposed contract actions when this would delay award and seriously injure the Gov't
  - Exception to reporting actions between \$25K and \$200K





# Expedited Contracting

- Examples of existing authorities to expedite contracting actions include:
  - Exceptions to the normal limitations on price ceilings, definitization schedules, and obligation percentages for letter contracts and other forms of undefinitized contract actions supporting contingency, humanitarian or peacekeeping operations
  - Waiving bid guarantees
  - Awarding letter contracts and other forms of undefinitized contract actions to expedite the start of work (the HCA must determine that no other type of contract is appropriate)





# Expedited Contracting

- Examples of existing authorities to expedite contracting actions include:
  - Exemptions to restrictions on foreign contracting with country subject to economic sanctions administered by the Dept of the Treasury, Office of Foreign assets control for buys up to \$15K
  - Exceptions to the requirement to purchase food, specialty metals, or hand or measuring tools that have been grown, reprocessed, reused, or produced in the United States





# Expedited Contracting

- Examples of existing authorities to expedite contracting actions include:
  - Exception for providing payment through electronic funds transfer
  - Protest overrides for urgent requirements where the Gov't will be seriously damaged if award is delayed





# Business Considerations

## Negotiating Practices

- Document how fair and reasonable prices were obtained
- Oral Agreements can happen with a simple handshake but should be followed with a written signed contract





# Simplified Acquisition Procedures

- Simplified Acquisition Procedures (SAP) are streamlined purchasing methods in FAR 13 used to expedite support to the war fighter and reduce administrative lead times
- Agencies shall use SAP to the maximum extent practicable for all purchases of supplies/services not exceeding the Simplified Acquisition Threshold (SAT), including purchases at or below the micro-purchase threshold





# Simplified Acquisition Procedures

- Competition requirements are not waived by use of the SAP ... CCO must still promote competition to the maximum extent to obtain supplies/services from the source whose offer is fair and reasonable and most advantageous to the Government





# Contractual Instruments

- Contractual Instruments for Contingency
- Most requirements met with SAP, using:
  - SF 44 (Purchase Order-Invoice-Voucher)
  - Dept. of Defense (DD) Form 1155 (Order for Supplies and Services)
  - SF 1449 (Solicitation\Contract\Order for Commercial Items)
  - Blanket purchase agreements (BPA)
  - Government-wide Commercial Purchase Card (GCPC)





# Contractual Instruments

- DD Form 1155s:

Purchase orders are self-contained, one-time contracts which typically result in one delivery/one payment ... conditions for use:

- When used as a P.O., shall not exceed the SAT
- Vendors are solicited orally or in writing
- When clauses and provisions are req'd to protect Gov't interest
- As a task or delivery order written against an IDIQ contract





# Contractual Instruments

- SF 1449s:
- For commercial items/services up to \$5.5M purchased under SAP or up to \$11M (if used to support a contingency operation)
- **Note: If used to support a contingency, CCOs should use simplified trade off source selection techniques found in FAR 15**





# Contractual Instruments

- Standard Form 44:
  - Purchase order-invoice voucher primarily for on-the-spot, over-the-counter purchases of supplies and non-personnel services
  - Conditions for Use:
    - Immediately available, one delivery and payment, purchase amount is below micro-purchase threshold (but up to the SAT for a warranted CCO)





# Contractual Instruments

- Blanket Purchase Agreements:
  - A simplified method of filling anticipated repetitive needs for supplies or services by establishing "charge accounts" with qualified sources of supply





# Contractual Instruments

- Conditions for Use: (BPA)
  - When there is a wide variety of items in a broad class of goods (e.g. hardware) needed but the exact items/quantities/delivery are unknown in advance
  - Individual purchases are not expected to exceed the SAT
  - Should be established without a purchase request
  - Shall not cite accounting and appropriation data
  - When there are multiple suppliers that provide similar products/services





# Contractual Instruments

- Government Purchase Card (GPC):
  - Preferred method of purchasing supplies or services within the micro-purchase threshold





# Contractual Instruments

- Conditions for Use: (GPC)

- All purchases made or paid are subject to provisions of FAR/DFARS Part 13 therefore must be authorized and documented accordingly
- May be used by CCOs during contingency, humanitarian, or peacekeeping mission for procuring immediate supplies or services for a single delivery up to CCO's single purchase limit
- May be used for over the counter purchases (when the local banking infrastructure permits)
- Frequently used (when local infrastructure supports the technology) over the phone and over the Internet via  
<https://wbt.access.usbank.com>





# Contractual Instruments

- Imprest Funds and Third Party Drafts:
  - Used as a last resort, given the significant security requirements for securing the money ... SF 44s and GPC accounts have generally eliminated the need for imprest funds





# Delivery Tickets

- Delivery Ticket Requirements
- GPC
  - Use of GPC by CO
- Imprest Fund and Third Party Drafts
- Oral Solicitations
- Performance-Based Acquisitions
- Performance-Based Contracting Review Thresholds
- Performance-Based Requirements
- Source Selection Processes and Techniques (Competitive)





# Accountability

- Procurement Instrument Identification Numbers (PIINS):
  - This number is to aid in tracking all actions
- Conditions for Use:
  - DFARS subpart 204.70 prescribes policies and procedures for assigning numbers to all solicitations, contracts, and related contractual instruments





# Accountability

- Sample PIIN:

- N00062 ...Department or Agency
- 90 ..... Last 2 digits of Fiscal Year
- D ..... Instrument Type
- 0001 ..... Serial Number
- 0005 ..... Supply Number





# Field Ordering Officers and Ordering Officers

- Field Ordering Officers (FOO):
  - SF 44s may be used by persons other than the CCO (such as FOOs)
- Conditions for Appointing FOOs:
  - Be a member from within or outside the contracting organization
  - Be nominated by name to the CO through their Commander
  - Be appointed in writing by the CO with the authority to execute micro-purchases (via the use of SF 44 or ESF 44)
  - Proof of basic training on the appropriate use of the form
  - Is teamed with an appointed/trained Paying Agent





# Field Ordering Officers and Ordering Officers

- Ordering Officers (OOs):
  - Are delegated to place calls under existing BPAs
  - Responsibility rests with the CO to train OOIs
  - The CO should also provide access to BPA price lists/catalogs
  - Ensure suppliers have written notice regarding authorized OOIs
  - Ensure OOIs conduct monthly account reconciliation for vendor payment





# Contract Types

## Selecting Contract Types (FAR 16.101)

Contract types include:

- Fixed-Price
- Firm-Fixed-Price (FFP)
- Cost-Reimbursement
- Incentive Type
- Indefinite Delivery
- Definite Quantity
- Indefinite Quantity
- Requirements
- Letter and Undefinitized Contract Actions (UCAs)





# Contract Types

- Fixed Price Contracts:
  - Government must be able to describe exactly the required contract results and allow the contractor the flexibility to plan, manage, and execute the work to achieve those results

***Refer to FAR 16.602 for the various types of instruments***





# Contract Types

- Indefinite Delivery Contracts:
  - Government anticipates a reoccurring requirement but the specifics e.g. exact time, quantity, and material are not known in advance

***Refer to FAR 16.5 and DFARS 216.5 for the various types of instruments***





# Paying Agent Duties

- CCOs and Paying Agents should work jointly to accomplish the following:
  - Ensure their respective duties are appointed/documentated in writing from the deployed commander
  - Ensure bulk and multiple types of appropriated/non-appropriated funding to support the deployed mission
  - Establish PR initiation/certification/reconciliation process
  - Develop funding strategies to foster business partnerships and economic growth in-theater (e.g. use of progress, advance interim, and partial payments)





# Paying Agent Duties

- DoD Financial Management Regulation, Volume 5, Paragraph 020604
- CCOs not normally designated as paying agents
- CCOS must be designated paying agents to make cash payments





# Paying Agent Duties

## Payments

- Advance and Partial Payments
  - Noncommercial
  - Commercial
- Options Instead of Advance Payments
- Considerations
- Partial Payment
- Settlement of Paying Agent Account





# Contract Type Compared to Risk Assessment

During a contingency, humanitarian assistance or peacekeeping operations, selecting a contract type is typically more difficult because customer needs easily may be understated or overstated

- Conditions for Use:
  - CCO should make the determination based on the facts surrounding each individual acquisition
- Objective:
  - Select the type that places a reasonable degree of risk upon the contractor and provides the contractor with the greatest incentive to perform efficiently and economically





# Contract Type Compared to Risk Assessment

- Items for Consideration (*additional factors listed in FAR 16.104*):
  - Stability and predictability of the requirement and local market
  - Specificity of the description of work
  - Track records or past performance of the available contractors

*Lastly, document the rationale for the contract type selected in the contract file!*





# Unauthorized Commitments, Ratifications, and Policy

- Unauthorized Commitment:

- “An agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government.” (FAR 1.602-3(a))

- Ratification:

- “The act of approving an unauthorized commitment by an official who has the authority to do so.” (FAR 1.602-3(a))





# Unauthorized Commitments, Ratifications, and Policy

- Policy (FAR 1.602-3(b)(1)):
  - “Agencies should take positive action to preclude... the need for ratification actions...these [ratification] procedures may not be used in a manner that encourages such commitments being made by Government personnel.”





# Unauthorized Commitments, Ratifications, and Policy

## Procedures

- Apply the Limitations IAW FAR 1.602-3(c):
  - Government has or will obtain benefit
  - The ratifying official (CO) has the authority to enter into a contract
  - The resulting contract would have otherwise been proper
  - Price is Fair & Reasonable
  - CO recommends payment with legal concurrence
  - Funds are and were available
  - In accordance with other limitations





# Unauthorized Commitments, Ratifications, and Policy

- Properly Dispose the Findings
  - Non-Ratifiable
    - Did not meet the criteria of one or more of the limitations, CO's job is complete, but legal concurrence would be prudent
    - Possible Claim?
      - ***Damage by troops military action***
  - FAR Part 50?
    - ***“...facilitate the national defense under extraordinary emergency authority...”***





# Unauthorized Commitments, Ratifications, and Policy

- Properly Dispose the Findings
  - Ratifiable
    - Statement from the unauthorized committer
    - Collect all other transaction documents
    - Unauthorized committer's commander's endorsement
    - D&F
      - ***Approval from the chief of the contracting office***
      - ***Evidence of funds availability at time of commitment***
    - Pay the contractor (SF44, PO, etc.)





# Unauthorized Commitments, Ratifications, and Policy

## The CO's Role

- Remember the definitions
  - Can not ratify that which is not an unauthorized commitment...even if you want to!
- Remember your job
  - Attitude
    - Can not ratify that which *is* an unauthorized commitment just because you don't feel like it
    - Not your duty to punish and/or harass (If you have the time for it, that means you you're not working hard enough!)





# Unauthorized Commitments, Ratifications, and Policy

## The CO's Role

- Teach them to fish (training, training, training)
- FAR 1.602-3(b)(1)
  - Unauthorized obligors are not relief contracting officers!





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